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Tracie K. Lindeman
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH ALEXANDER HENDERSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 62629

**OPPOSITION TO MOTION TO
DISMISS APPEAL**

Appellant Joseph Alexander Henderson through his counsel, Julian Gregory of the Law Office of Gabriel L. Grasso, hereby submits this Opposition to the State's Motion to Dismiss Appeal and Request for Stay of Briefing Schedule. This motion is based upon the attached memorandum of points and authorities and all papers and pleadings on file.

DATED this 23 of December, 2013.

/s/ Julian Gregory

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Appellant Joseph Henderson filed his timely proper person petition
3 on January 11, 2011, (2 AA 1), and counsel was appointed to represent Mr.
4 Henderson on March 17, 2011, (*id.* at 35-36). Mr. Henderson filed his
5 Amended Petition on August 26, 2011. (*Id.* at 37.) The district court con-
6 ducted an evidentiary hearing on October 22, 2012, after which it denied
7 Mr. Henderson's petition. (*Id.* at 68, 109.) The State prepared, and the
8 court adopted, a Findings of Fact, Conclusions of Law and Order filed on
9 November 21, 2012. (*Id.* at 130.) Mr. Henderson filed his proper person
10 Notice of Appeal on February 12, 2013, (*id.* at 146), and this Court remand-
11 ed this case for the appointment of counsel, (*id.* at 157). The undersigned
12 counsel was appointed to represent Mr. Henderson on March 14, 2013. (*Id.*
13 at 158-59.)

14 Nevada Revised Statute 34.575 provides for a thirty-day window dur-
15 ing which a defendant in a criminal case may file a notice of appeal. That
16 thirty-day period begins to run upon service of the order denying the peti-
17 tion upon both the petitioner and his counsel. *Lemmond v. State*, 114 Nev.
18 219, 221, 954 P.2d 1179, 1180 (1998). Though this Court's authority to hear
19 appeals from decisions on post- conviction relief is by legislative grant,
20 *Jordon v. Housewright*, 101 Nev. 146, 148, 696 P.2d 998, 999 (1985), this
21 Court has taken a lenient view toward technical failures in appeals, includ-
22 ing deadlines. Where there is a plain intent to appeal and the respondent is
23 not misled, this Court will not enforce technical filing rules to dismiss an
24 appeal. *Id.* at 220, 954 P.2d at 1179 ("The notice of appeal is not, however,
25 intended to be a technical trap for the unwary draftsman.")

26 Mr. Henderson's pro se notice of appeal was received by this Court on
27 December 5, 2012, and returned to him on December 6, 2012. (2 AA 151.)
28 Mr. Henderson clearly expressed his interest at that time to appeal his case.

1 Mr. Henderson also indicated to the Clerk of the District Court that he had
2 intended to appeal, and asked that the appropriate measures be taken. (*Id.*
3 at 152.) Left without counsel and attempting to perfect an appeal without
4 any specialized legal knowledge, Mr. Henderson is the “unwary draftsman”
5 that this Court contemplated in *Lemmond*. 114 Nev. at 220, 954 P.2d at
6 1179.

7 Mr. Henderson always intended to appeal from the district court’s or-
8 der in this case. His intent was apparent to all parties, given his attempts to
9 perfect his appeal with this Court and his contact with the district court
10 clerk. There is no prejudice to the State in that it was never misled, and the
11 interests of justice would best be preserved through permitting Mr. Hen-
12 derson to continue his appeal. For those reasons, Mr. Henderson would
13 ask this Court to deny the Respondent’s motion and reinstate the briefing
14 schedule in this case.

15
16 DATED this 23 of December, 2013.

17
18 /s/ Julian Gregory

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20 Nevada Bar No. 11978

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/s/ Julian Gregory

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Pursuant to NRS 239B.030

/s/ Julian Gregory
Julian Gregory, Esq.

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